Nos. 131 and 132

In the Supreme Court of the United States

OCTOBER TERM, 1941

UNITED STATES OF AMERICA, PETITIONER

v.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court overruling the demurrers to the indictment (R. 77) has not been

reported. The opinion of the Circuit Court of Appeals (R. 2801) is reported in 118 F. (2d) 684.

JURISDICTION

The Circuit Court of Appeals filed an opinion directing reversal of the convictions on April 4, 1941 (R. 2801), denied a petition for rehearing on April 24, 1941 (R. 2813), and entered judgment on May 1, 1941 (R. 2813–2814). Petitions for writs of certiorari were filed in both No. 131 and No. 132 on June 5, 1941, and both petitions were granted October 13, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and as modified by Rule XI of the Rules of Practice and Procedure in Criminal Cases promulgated by this Court.

QUESTIONS PRESENTED

In No. 131 the question presented is:

(1) Whether money paid by a truck operator to members of a trucking union, which the jury found was paid for protection against violence rather than for labor, constitutes "wages paid by a bona-fide employer to a bona-fide employee" within the meaning of Sections 2 (a) and 3 (b) of the Anti-Racketeering Act.

In No. 132 the following additional questions are presented:

(2) Whether the conviction of a labor union and of some of its members for using violence and in-

timidation to compel the payment of money to them for protection against violence involves a construction or application of the Anti-Racketeering Act which infringes upon "the rights of a bona-fide labor organization in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States," within the meaning of the proviso in Section 6 of the Act.

(3) Whether Congress has constitutional power to make it a crime to obtain money by using force or violence to prevent and interfere with interstate commerce and transportation.

(4) Whether an unincorporated labor organization is a "person" within the meaning of the Anti-Racketeering Act.

(5) Whether the indictment satisfies the requirements of the Sixth Amendment by adequately apprising the defendants of the nature of the accusation against them.

STATUTE INVOLVED

The Act of June 18, 1934, 48 Stat. 979, 18 U. S. C. § 420 (a) *et seq.*, entitled "An Act To protect trade and commerce against interference by violence, threats, coercion, or intimidation," provides as follows:

> That the term "trade or commerce", as used herein, is defined to mean trade or commerce between any States, with foreign nations, in the District of Columbia, in any

Territory of the United States, between any such Territory or the District of Columbia and any State or other Territory, and all other trade or commerce over which the United States has constitutional jurisdiction.

SEC. 2. Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or

(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both.

SEC. 3. (a) As used in this Act the term "wrongful" means in violation of the crim-

inal laws of the United States or of any State or Territory.

(b) The terms "property", "money", or "valuable considerations" used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee.

SEC. 4. Prosecutions under this Act shall be commenced only upon the express direction of the Attorney General of the United States.

SEC. 5. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 6. Any person charged with violating this Act may be prosecuted in any district in which any part of the offense has been committed by him or by his actual associates participating with him in the offense or by his fellow conspirators: *Provided,* That no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States.

STATEMENT

The respondents in No. 131 and the petitioners in No. 132 (referred to herein as defendants) are

Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America and 26 of its individual members. Local 807 is a labor union composed of 10,000 New York City truck drivers. An indictment returned in May 1938 charged the defendants with conspiring to use force and violence, and threats of force and violence, to coerce those engaged in shipping merchandise by truck to New York City from out-of-state points to pay $9.42 for each large truck and $8.41 for each small truck making deliveries in the city, in violation of Section 2 of the Anti-Racketeering Act (R. 54–66). The indictment further charged that the owners of these "over-the-road" trucks employed drivers who drove the trucks to their destination in New York City, unloaded them, and picked up any return load (R. 55–56).

The indictment (R. 54–71) was in four counts, each of which set forth the same underlying facts. The first two counts charged conspiracies to violate, respectively, clauses (a) and (b) of Section 2 of the Act. Counts three and four charged conspiracies to violate Section 2 (c).[1] The defendants were all convicted under count one and some were also convicted under one or more of the remaining counts (R. 2484–2487). The court below reversed

[1] Each of the clauses (a), (b), and (c) of Section 2 defines certain conduct as unlawful. Clause (d) makes it unlawful to conspire to commit any of the acts specified in the preceding clauses.

these convictions upon the ground of error in the District Court's charge to the jury.

Defendants were likewise convicted under an indictment charging them, upon substantially the same facts, with violating Section 1 of the Sherman Act (R. 41–54, 2484–2487). The court below also reversed these convictions but the Government's petition for certiorari did not seek a review of this reversal.

The evidence showed or tended to show the following:

A. ORIGIN OF THE CONSPIRACY

In December, 1936, Local 807 held a regular election of officers for the following two years as provided in the Local's constitution (Ex. 69, Art. VII, p. 9; R. 2569). Defendant Campbell was elected a delegate on the ticket which successfully opposed the incumbent officers (R. 2075, 2111–2112). He was allotted jurisdiction over the west side of Manhattan (R. 2077, 2115) and his duties under the constitution were to organize the craft and to adjust grievances (Ex. 9, Art. IX, p. 11; R. 2569). A few months later, in April, 1937, defendant Furey, whom Campbell had known for many years, was also elected a delegate and thereafter he and Campbell shared jurisdiction over the west side of Manhattan (R. 2115–2116).[2]

[2] The other officers elected in 1936 (President William Devery, Secretary-Treasurer Thomas Hickey, Recording

The conspiracy, as charged in the indictment, commenced about the time of the December, 1936, election and was still continuing at the time the indictments were filed on May 31, 1938 (R. 59). Many of the defendants were not even members of the Union before the commencement of the conspiracy and joined it for the first time thereafter. Eight of the fourteen individual defendants who took the stand admitted that they joined the Union after December, 1936.[3]

B. THE NATURE OF THE CONSPIRACY

As the indictment charges, Local 807 and the individual defendants, beginning on or about December 1, 1936, conspired to compel and coerce the owner of every truck entering into New York City from another state (heininafter called "over-the-road trucks") to pay to one or more of the individual defendants the sum of $9.42 for each large truck and $8.41 for each small truck which delivered merchandise within the city. These sums were equal in amount to the wage scale of Local 807 for an eight hour day's work for local trucking in New York City.[4]

Secretary Samuel Brennan, Trustee John Flaherty, and delegate Thomas Clarke) were also named as defendants in the indictments, but the indictments were dismissed as to them (R. 165–166, 2114–2115); and only Campbell and Furey were brought to trial.

[3] R. 1918, 1971, 2033, 2125, 2165, 2172, 2184, 2214.

[4] See Gov. Ex. 4, R. 2535–2536. The sums in question were one-sixth of the weekly salaries of $56.50 and $50.50, respectively.

The crux of the offense charged in the indictment and shown by the evidence is that the defendants conspired together to exact these payments for each truck entering into New York City, not as payment for services rendered by the defendants, but as tribute for the privilege of transporting and delivering merchandise within the city. The payments were required to be made whether or not a Local 807 man rendered any services in connection with the driving or unloading or loading of the truck in the city and, where some services were rendered, irrespective of the amount of those services.

The means used to coerce these payments were acts and threats of physical violence to the persons and property of owners and operators of over-the-road trucks, including assaults and threats of assaults upon owners and drivers, and damage and detention, and threats of damage and detention, of the trucks and the merchandise transported in them. See pp. 11–15, *infra*.

Prior to the formation of the conspiracy, the driver of the over-the-road truck, or his helper, normally drove the truck to the place or places of business of the consignee or consignees; unloaded the truck there, frequently with the help of employees of the consignee; drove the truck to the place where the return load was to be picked up; loaded the truck; and then drove the truck back to the point from which operations had commenced. Many of the over-the-road truck drivers were mem-

bers of unions other than Local 807; some of them were members of other locals of the same International Brotherhood of Teamsters to which Local 807 belonged.[5] None of the over-the-road drivers were members of Local 807, for they were not allowed to join (R. 211, 1288). It is evident, therefore, that the defendants' objective was not organization of the drivers. It is also apparent from the facts narrated below relating to the "service" rendered by the Local 807 men that the purpose of the conspiracy was not to change the method by which over-the-road trucks were operated in New York City. The purpose and effect of the conspiracy was, in substance, to prevent any over-the-road trucks from entering New York City without paying a toll of $9.42 or $8.41, as the case might be, for the privilege of doing business within the city. The defendant Campbell, one of the Union officials, himself reported at a Union meeting that the conspiracy was a "shakedown racket" in which "the men who were chasing hill billies were not interested in securing a contract or work but in the $9.41" (R. 2123).

A detailed picture of the operation of the conspiracy emerges from the testimony which recounts the personal experiences of the witnesses with the defendants. This testimony can most conveniently be described by taking up the conspiracy in

[5] R. 233, 435, 925, 1077, 1151, 1239, 1263, 1301, 1318, 1402, 1429, 1440, 1448, 1552, 1566–1567, 1618, 1632, 1666, 1716.

its two stages—the first stage, in which trucks were forcibly stopped and payments forcibly exacted, and the second stage in which the truck operators were compelled to sign "contracts" with the Union to continue to pay the tribute.

1. *The first stage of stopping the trucks.*—Local 807 men, including the defendants, usually travelling in groups of from three to a dozen and often provided with automobiles, stationed themselves at the New York exit of the Holland Tunnel and at other points of entry into Manhattan (R. 195, 233–235, 426–427) and engaged in "gypsy chasing," that is, chasing over-the-road truck drivers. When an over-the-road truck appeared, the Local 807 men sometimes jumped on the running board while the truck was stopped at a traffic light; they sometimes forced the truck to a curb and, more frequently, they followed it to the place of unloading. They informed the driver that a Local 807 man would have to be employed—or at least paid—for unloading, the amount demanded being $9.42 for a large truck and $8.41 for a small truck.[6] In many cases the threat implicit in their number, their words and their general conduct, was sufficient to exact the required payment. Those who resisted received actual threats of bodily harm or damage to their trucks and merchandise, and in most cases this was

[6] R. 233–235, 426–428, 466–468, 1329–1333, 1384–1385, 1463–1465, 1612–1613.

sufficient to obtain the money claimed.[7] The few truckers who still resisted were physically assaulted.[8]

The demands for payment by the Local 807 men were made irrespective of whether the unloading had been begun, partly finished, or completed, and irrespective of whether any Local 807 man had taken any part in the unloading.[9] In many instances groups of the defendants would follow a truck to its destination and wait until it was practically or completely unloaded. They would then appear, usually driving up in automobiles, and tell the driver that if he knew what was good for him he would not finish unloading or, if he had already finished, would not leave town with his truck, until the $9.42 was paid.[10] If the driver did not have $9.42, the defendants collected whatever the traffic would bear.[11] Sometimes if a defendant could collect more under the guise of overtime or as a promise to quit a particular job, that would be done.[12]

The record demonstrates beyond dispute that the demands of the Local 807 men were enforced by

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[7] R. 200, 238–239, 508; 626, 636, 1208, 1223–1224, 1347–1350, 1636–1637.

[8] R. 340–342, 629–630, 1624, 1813–1814.

[9] R. 592–594, 923, 1153–1157, 1403–1405, 1460–1461, 1466–1470, 1624, 1708.

[10] R. 462–466, 589–591, 623–625, 1078–1079, 1463–1465, 1670, 1673–1674, 1708, 1711.

[11] R. 632–633, 706, 708, 831, 909–911, 919, 1130–1131.

[12] R. 1078–1081, 1643–1645.

violence and threats of violence. The following examples are typical of what occurred on many other occasions. Driver Fidler from Pennsylvania saw the defendant George Needelman emphasize his statement to another over-the-road driver that he had to pay a city man by beating him and kicking him (R. 629–630). Driver Finlaw from South Jersey was told by an 807 man that another driver from South Jersey employed by Byrnes Trucking Co. had been beaten up at the George Washington Bridge for attempting to deliver a load in New York City without paying money (R. 1624). Driver Harbert from South Jersey saw an 807 man pull an owner-driver from Delaware off his truck and force him to pay (R. 1677–1680). When driver Mattson from South Jersey attempted to deliver one five-gallon can of oil at Pier 58 and insisted upon his right at least to take the can back to New Jersey without paying $9.42 for that delivery, which would take five minutes, he was beaten up by defendant Dillon, accompanied by two others, and was forced to pay $9.42 for the delivery. (R. 339–342). When he complained to a police officer who saw the assault, and said he was a victim of a union racket, he was told to get back to Jersey (R. 363–365). Carlton Hooks, a truck owner from North Carolina, was pushed away by the defendant Edward Weinheimer when he attempted to raise the door of his warehouse to load his truck (R. 1218).

Threats were more frequent than actual assaults because they usually accomplished their purpose. Driver DeRoches from Connecticut was told by defendant Dillon, accompanied by five other men, that if he unloaded he might be so severely injured as to require hospitalization (R. 200). Driver George Steller from Connecticut was told by the defendant Simpson, who was accompanied by eight or ten others, that he would be thrown in the river if he attempted to take away his loaded truck (R. 238–239). Driver Nolder from Pennsylvania was told by defendant Needelman that if a city man was not put on the truck "anything could happen" to the driver or truck (R. 568). Occasionally the language used was "pay or else" (R. 1577). Driver Fidler from Pennsylvania was told by the defendant Needelman that a half dozen of them would "beat the hell" out of him or run the truck into the river (R. 622, 636). Driver Allred from North Carolina was threatened by one of a group, which included defendants Edward Weinheimer and Needelman, with being put under a trolley car (R. 1347–1350). Hooks was told by 807 men that they would break up his equipment, if necessary (R. 1208), and put sand in the crank case (R. 1223–1224). Just before Raymond Byrnes, a truck owner from South Jersey, went to the Union office to discuss a "contract," one of a group of about fifty 807 men, including defendants Dillon, Randazzo, and Downes, who were holding up his seven

trucks (three of which were new and had cost $5,500 apiece), said that it would be a shame to upset such nice trucks (R. 1636–1637).

This stopping of the trucks and exaction of tribute was not a sporadic or haphazard practice but was constant and systematic. Not long after the campaign began, the trucks were stopped on every trip and it became necessary to supply the drivers with $9.42 in order to insure the safe delivery of the merchandise in New York City and the safe return of the drivers with their trucks.

2. *"Contracts" with Local 807.*—The complete nature of the conspiracy was revealed in its second stage when the truckers were required to sign contracts with the Union.

After the trucks were stopped and payments exacted, the defendants communicated with the owners in New Jersey, Pennsylvania, Delaware or other states, either through the drivers or by telephone, mail, or personal visits by the defendants; the owners were told bluntly that they had to sign a so-called contract with the Union whether they wanted to or not, and that their only choice was between signing up or being driven out of business.[13] In some instances owners were promised that if they signed up, they would be permitted to unload two trucks a day for $9.42 instead of pay-

[13] R. 519–520, 524, 527, 532–533, 908–910, 912–913, 916–919, 1117–1119, 1112–1124, 1242, 1278, 1281, 1284–1286, 1372–1377, 1388–1389, 1424–1425, 1481, 1490–1493, 1661–1663.

ing that sum for every truck caught (Govt. Ex. 8, R. 2543). But even after signing, owners found that they had to pay $9.42 for each truck (R. 821).

In the typical case the owner, a small town businessman, would receive a telephone call from his driver or one of the defendants who had "stopped his job" and be told that his trucks would not be permitted to leave New York until $9.42 for each truck was paid, and that he could not continue to do business in New York City until he signed a "contract" with Local 807. While his trucks were held up he was, in effect, out of business and had no choice but to telegraph the money or direct his driver to pay it in order to get his trucks released. He was then required to come to New York and meet the defendants on some street corner or in some eating place to make arrangements to permit him to remain in business.[14]

The operator would then be taken by the defendants and other 807 men to the headquarters of the Union on Varick Street.[15] There he was told that he had to sign a "contract" with the Union or discontinue hauling merchandise into New York City.[16] Most of the operators signed. At least one who did not was forced to give up his New York business (R. 1215). And some who did sign were likewise later forced out of business (R. 846, 1068, 1249).

[14] R. 518, 1278–1281, 1319–1320, 1569, 1570.

[15] R. 522, 1058, 1281, 1385, 1481, 1660.

[16] R. 531, 1285, 1322–1324, 1424–1425, 1637, 1661, 1720–1721.

The agreement which the owners were forced to sign was on a printed form and merely set forth the regular Union scale of pay, hours of work, etc." It did not require the payment, actually demanded and received, of $9.42 for each truck brought into the city, irrespective of the amount of work required to be done to unload and load it; rather, the scale of pay in the contract set forth weekly wages based on a full week's work. The agreement also did not contain any provision with respect to the peculiar problems of the over-the-road trucking industry, where some trucks, with merchandise consigned to a single place, could be unloaded in a very short space of time, and others, with merchandise consigned to many different consignees, took many hours to unload. The agreement also did not contain the requirement, actually imposed, that the truck operators pay whatever 807 man or men the Union officials saw fit to assign to them.

C. RELATIONSHIP BETWEEN THE OPERATORS AND THE DEFENDANTS

The relationship of the over-the-road truck owners and the defendants was essentially the same before and after the signing of the "contracts" and irrespective of whether a contract was signed. The defendant who "stopped the job"—that is, who first tied up the operator's trucks—became the op-

[11] Gov't Exs. 4, 9, 15, 32, 38, 41, 46, 48, 51, 52, 53, 55, 57, 70; R. 2535-2539, 2544, 2545, 2550, 2554, 2555, 2556, 2557, 2559, 2560, 2561, 2562, 2564, 2570.

erator's "No. 1 man." Either he, or some other 807 man selected by him, was assigned to every truck owned by the operator which came into the city to unload or load. The operator was then required to pay the $9.42 to the man assigned to the truck, completely irrespective of whether he wanted the man to work for him, whether the man did in fact work for him, and, if he did do some work, whether that work was a full day's job of unloading and loading or was merely driving a truck a single block.

The situation can best be understood by the narration of a few typical instances. Defendant Needelmen demanded payments from truck owner Pitzer for loads on which 807 men did not work at all (R. 535). Defendant Edward Weinheimer forced driver Dillman of Buffalo to pay $9.42 for the unloading of a truck which Dillman had himself unloaded while Weinheimer stood by (R. 589–590). Later, on the same trip, Weinheimer trailed Dillman, watched him load his truck and then demanded another $9.42; Dillman, however, escaped while Weinheimer was off looking for other 807 men to help him enforce his demand (R. 591). Dillman made trips to New York on an average of once a week during the course of the conspiracy from December 1936 to June 1, 1938. On almost every occasion he paid $9.42 to Edward Weinheimer himself, or to another man supplied by Weinheimer, although Weinheimer never did any

work whatever, except once when he drove Dillman's truck two blocks and almost hit a child (R. 592–593, 595). When Dillman objected about Weinheimer's failure ever to help unload, Weinheimer threatened him with physical violence and said he was there just to "cover" the truck and didn't have to unload (R. 594).

The defendant Dillon told truck owner Byrnes of South Jersey that if he would pay him $100 he would get off the job and let someone else take it, and Byrnes paid him (R. 1643–1644; Govt. Ex. 56, R. 2563).

McCaffrey, an 807 man, insisted that Spackman, a truck owner from Western Pennsylvania, pay him for every truck entering New York City from that region whether or not the truck was unloaded by McCaffrey (R. 923). Driver Hughes from South Jersey was forced by the defendants Sharkey and Klenofsky to sign a slip to the effect that Sharkey had unloaded although he was not even present, and Hughes had done the work (R. 1153–1157). Driver Warren of Palmer's Motor Express from South Jersey had to comply with the demands of 807 men to be paid although none of them helped in unloading and he protested to them that the platform men employed by the consignee of the merchandise did all the work (R. 1403–1405). Defendant Murphy was paid by truck owner Zohlman from South Jersey for unloading on several occasions although Murphy refused to help

Zohlman's drivers do any of the work and said he was paid to "watch the truck to see that it wasn't molested by anyone else" (R. 1460–1461, 1467–1470). Murphy, asked what services he rendered if he didn't drive or help unload, characterized his position as that of "associate driver" (R. 1997). Defendant Samuel Reichler admitted on cross-examination that he demanded and received payment equivalent to a driver's wages from Hummel Warehouse, Inc., although the only driving he did was from the entrance to the Procter & Gamble plant at Port Ivory, Staten Island, into the plant, a distance of about one block (R. 2137).

The record clearly demonstrates that the operators did not consider themselves as employers of the Local 807 men assigned to their trucks and did not regard the payment of the $9.42 to the 807 men as remuneration for services rendered. Truck owner Beatty told defendant Cahill that taking the money was "just the same as highway robbery"; when Beatty attempted to fire Cahill for wrecking one of his trucks, telling Cahill that he had never hired him, Cahill answered that "there was no way of getting rid of him" (R. 837). Two checks from Beatty's company to Cahill were marked "for protection against racketeering" (R. 838–841). Mrs. Libe, another truck owner, testified that although she was paying an 807 man, she had not employed him (R. 1537) and she had previously protested that the payments demanded were "just a racket"

(R. 1483). Truck owner R. A. Byrnes told defendant Randazzo that he had never hired him and refused to treat him as an employee for social security purposes (R. 1647–1648). Similarly, Hummel told defendant Samuel Reichler that the whole thing "stank of graft and racketeering" (R. 1377).

The record similarly demonstrates that the defendants did not consider themselves as employees of the truck operators. Defendant Furey told an over-the-road driver who attempted to unload his truck that Local 807 men were bosses of the trucks and ran them in New York City (R. 1305). When truck owner Theodore Steller attempted to get rid of defendant Bender for damaging merchandise, Bender's answer was that he couldn't be fired and that the freight could not be moved without him (R. 313). One 807 man told truck owner Harris that "we will be the judge as to how much work you will get for $9.42" and, on another occasion, that "I don't give a damn whether we satisfy you or not. You are going to pay and pay through the nose and like it" (R. 1586).

The truck operators had nothing whatever to say concerning the 807 men assigned to cover their trucks. The 807 man who "made the job," that is, who first stopped the trucks and required the owner to begin payments, had complete control over which other 807 men should get payments. Pitzer was told he could not pick his own 807 men but would have to take men selected by one of the defendants who made the job (R. 529, 531, 543–544, 546).

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Beatty, when told by a Union official that he would have to pay or stay out of New York, tried to soften the demands by at least paying an 807 man he knew. Defendant Cahill told him that he, Cahill, was to be paid because he had stopped the job and would run the New York end of it (R. 818–820). In another instance in which operator Goddard put on an 807 man of his own choosing, defendant Edward Weinheimer, with a group of 807 men sent to his assistance by delegate Furey, beat him up, drove him off the job and told Goddard that he would hire the men, and he did so. Furey backed him up in this claim (R. 691–698). These instances, as well as other similar testimony in the record, show that it was part of the conspiracy, as an inducement to those engaged in it, that the 807 men who made the jobs controlled the distribution of the spoils to their own cliques by assigning them to cover the trucks if they did not want to pocket all of the payments themselves (R. 1065–1066, 1120). Defendant Campbell, a delegate of the Union, expressly backed up this system with the Union's authority (R. 1661–1662).

D. UNION PARTICIPATION IN THE CONSPIRACY

The Union, through its officers, including defendants Campbell and Furey, and its members participated actively in the entire course of the conspiracy. The complete authority of defendants Campbell and Furey over union affairs on the west

side of Manhattan was recognized by the president of the union himself (R. 681). From the beginning it was made clear to operators and drivers that they were being subjected, not merely to an occasional petty graft of a small group of individuals, but to an organized scheme backed by the entire force of the Union. The defendants and other 807 men who stopped the trucks identified themselves as members of the Union and acted as such in its name. Usually the signing of "contracts" was accomplished at Union headquarters with the assistance of officers of the Union. Operators were told by the Union officers that the 807 man who "made the job" was the one who would collect and if a man made a number of jobs he would make all the collections or would designate which of his men would collect (R. 1494, 1662). Thus the Union encouraged "gypsy chasing" by assuring the defendants that all the jobs they made they could keep without interference from other 807 men.

In one situation between May 4 and May 19, 1937, "contracts" with three different South Jersey trucking companies all bore the names of defendants Dilion and Randazzo (Exs. 4, 53, 55; R. 2535–2539, 2561, 2562), indicating on their face that these defendants were to collect money from all three companies operating into New York City during the same period. In addition the name of defendant Downes and another 807 man not indicted appeared on two of these "contracts."

E. THE COURT'S CHARGE

The court charged the jury that they could not find the defendants guilty on any count of the Anti-Racketeering indictment "if the money which they are charged with having obtained from truck owners through the use of force and violence or threats of force and violence were paid as wages, and if the defendants who received the money were bona fide employees and the truck operators who paid the money were bona fide employers" (R. 2450). The court further charged (R. 2450-2451):

> The question whether the sums of money paid by the truck operators to the defendants were wages paid by a bona fide employer to a bona fide employee is to be determined by the jury according to the relationship existing between the operators and such defendants. If the jury find that the sums of money paid by the truck operators were not wages so paid in return for services performed by such defendants, but were payments made by the operators in order to induce the defendants to refrain from interfering unlawfully with the operation of their trucks, then the sums in question may not be regarded as wages paid by a bona fide employer to a bona fide employee.
>
> The fact that any defendant may have done some work on a truck of an operator is not conclusive as to whether payments received by such defendants were wages; the jury may consider the performance of work

by a defendant as evidence of the nature of the relationship between the defendant and the operator as establishing the status of a bona fide employer and a bona fide employee. If, however, what the operator was paying for was not labor performed but merely for protection from interference by the defendants with the operation of operator's trucks, the fact that a defendant may have done some work on an operator's truck is not conclusive.

The jury may consider the state of mind of any defendant as to whether he considers himself as being paid for work done, or for refraining from interfering with the operator's trucks.

The jury may consider the extent of the work done in the circumstances and the willingness or the unwillingness of the defendant in each instance to do the work for which he claims to have been hired.

All of these are factors which may be taken into consideration in determining whether or not the sums of money paid by the operators to the defendants were wages paid by a bona fide employer to a bona fide employee. The fact that certain payments were paid pursuant to a contract between certain operators and the defendant union is not conclusive as to whether these payments were wages, that is, bona fide wages, or not.

The court then defined the elements of each offense charged under the different counts of the

Anti-Racketeering indictment in accordance with the provisions of the statute (R. 2451–2452). The court charged that the first two elements of all of the offenses charged in this indictment were that there must be a conspiracy and that interstate commerce must be affected. With respect to count one, the only count upon which all of the defendants were convicted, the court charged that the necessary elements were as follows: "As to Count No. 1, that the conspiracy was for the purpose of obtaining by the use of force, violence or coercion, or the threat to use force, violence or coercion, the payment of money" (R. 2451). Similarly, the court defined the elements of the other three counts.

The court further instructed the jury that the provisions of the Anti-Racketeering Act could not be applied in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States (R. 2445). He fully explained to them the provisions of all of the relevant statutes (R. 2437–2443).

By reason of this charge, we believe it must be assumed that the jury found as ultimate facts the following:

1. The defendants combined to stop and interfere with interstate trucks and to obtain money and other valuable considerations from truck operators by use of force, violence, or coercion or threats to use force, violence or coercion; and

2. The payments by the truck operators to the defendants were not wages paid by bona fide employers to bona fide employees but were exactions obtained by use of, or threats of, force, violence, or coercion and were made by the operators in order to induce the defendants to refrain from interfering by force, violence, and coercion or threats thereof with the operation of their trucks.

F. DECISION OF THE COURT BELOW

The majority of the Circuit Court of Appeals held that the District Court had failed to instruct the jury properly with respect to the phrase in Section 2 (a) excluding from the prohibitions thereof "the payment of wages by a bona fide employer to a bona fide employee."[18] The majority reached this conclusion because it held that the foregoing exception exempted all payments obtained from an employer, even though by force or violence, if those exacting such payments proffered their services and were qualified to render the services which they proffered. The court therefore reversed the judgments of conviction (R. 2813–2814). Judge A. N. Hand dissented (R. 2809).

[18] See also Section 3 (b) of the Act, which provides: "The terms 'property', 'money', or 'valuable considerations' used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee."

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that money obtained from an employer by force or violence is immune from prosecution under the Anti-Racketeering Act if the person exacting such payment makes a proffer of services which he is qualified to render.

(2) In holding that the District Court's instructions to the jury were erroneous.

(3) In reversing the judgments of conviction under the Anti-Racketeering Act.

SUMMARY OF ARGUMENT

I.

A. The provision of the statute exempting "wages paid by a bona-fide employer to a bona-fide employee" confers immunity where compensation is paid for services rendered pursuant to a genuine employer-employee relationship, but not where payments are made to secure protection against unlawful interference with business operations, whatever the guise in which such payments are made. In determining which of these situations exists, the test is not whether *some* service has been rendered but whether, under all the circumstances, the payments have been made for labor or for protection. The District Court submitted this issue of fact to the jury and the jury determined the issue adversely to the defendants.

The court below was of the opinion that the trial court had erred in failing to instruct the jury that

if the defendants had in good faith proffered their services to the truck operators, they would be entitled to immunity under the wage exemption even though their proffered services had been rejected. This construction of the wage exemption has no warrant in the statutory language since a mere applicant for employment is not an "employee" nor is money which is paid to him "wages." The reason which the court gave for adopting this construction was that it would be an absurd result if the statute gave immunity to wage payments where the employment had originally been procured by coercion but failed to give immunity to payments where coercion had been used by persons unsuccessfully seeking employment. This reasoning is, we believe, fallacious. Those who use coercion to secure genuine employment are engaged in a legitimate labor objective; their activities, although perhaps constituting breaches of the peace, do not partake of the nature of extortion. But it is difficult, if not impossible, to conceive of a situation in which a person can succeed in obtaining money from a prospective employer by a mere proffer of services and without entering upon a genuine employment relationship unless his activities do partake of the nature of extortion. For an employer who, under threat of violence, pays a person whose proffered services he rejects must be paying only for protection against violence. Differentiation between these two situations was, therefore, not ab-

surd, as the court below thought, but entirely reasonable.

B. The proviso in Section 6 does not, like the wage exemption, directly grant any immunity but simply declares that the statute shall not be so construed or applied as to impair "the rights of a bona-fide labor organization in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States." The proviso thus applies only if "rights" expressed in "existing statutes of the United States" are in some manner impaired. In this case no such rights were infringed. Section 6 of the Clayton Act is inapplicable because the rights it confers are limited to certain relief against prohibitions of the "antitrust laws." Likewise there was no infringement in this case of the right to strike, picket, boycott, or to assemble peaceably given protection by Section 20 of the Clayton Act. For the same reason, the provisions of the Norris-LaGuardia Act limiting the jurisdiction of federal courts with respect to such activities are inapposite. There was also no impairment of the public policy declared in the Norris-LaGuardia Act since there was no interference or coercion by employers with defendants' right to organize or to select collective-bargaining representatives.

Furthermore, the proviso in Section 6 is inapplicable because the defendants' activities were not directed toward a legitimate objective. The facts narrated in the Statement demonstrate that those

activities were designed, not to secure a genuine employer-employee relationship, or other legitimate labor objectives, but to obtain money in return for protection. As defendant Campbell himself stated, the defendants were engaged in a "shakedown racket." This is manifestly not a "legitimate" object of a labor organization, however broadly that term may properly be construed.

C. The legislative history of the statute is not opposed to our contentions.

II

The Anti-Racketeering Act is patently constitutional. Congress may validly secure obedience to laws enacted pursuant to its delegated powers by imposing criminal penalties for violation. The Act does not deprive the states of power to punish acts of violence which may likewise constitute offenses under the Act. Federal legislation enacted pursuant to the commerce power of Congress does not bar complementary state legislation unless Congress has manifested a purpose to preempt the entire field and the Anti-Racketeering Act is obviously not a preemption of the entire field of regulation.

III

The Act applies to Local 807. The word "person" when used in federal legislation may include juristic as well as natural persons and it includes the former if this meaning serves to effectuate the

purposes of the statute. Since racketeers frequently employ so-called "protective" or "service" associations as a front, the Anti-Racketeering Act will more effectively prevent the mischiefs at which it is aimed if associations, corporations, and other legal personalities recognized by the law are subject to the penalties of the Act.

IV

The indictment is not defective. It describes with precision the nature of the conspiracy in which the defendants were engaged, the persons and commerce affected thereby, and the means used in accomplishing it. The indictment therefore fully satisfies the requirements of the Sixth Amendment that the defendant in a criminal prosecution be informed of the nature of the accusation against him. The indictment is likewise not defective because it charges defendants with conspiring to obtain money from over-the-road truck operators generally rather than from any specified operators.

ARGUMENT

I

UNDER PROPER INSTRUCTIONS OF THE COURT, THE JURY FOUND DEFENDANTS GUILTY OF VIOLATING SECTION 2 OF THE ANTI-RACKETEERING ACT. SINCE THIS VERDICT WAS AMPLY SUPPORTED BY THE EVIDENCE, DEFENDANTS' CONVICTIONS SHOULD BE SUSTAINED

Section 2 (a) of the Anti-Racketeering Act, *supra*, p. 4, makes it a crime to obtain money in

an interstate transaction by the use of force, violence or coercion, or by any attempt or threat to use force, violence or coercion. Section 2 (b) makes it a crime to obtain the property of another, with his consent, if the consent is induced by wrongful use of force or fear. Section 2 (d) makes it a crime for any person to conspire with any other person or persons to commit any of the acts made unlawful by Sections 2 (a) or 2 (b).

Sections 2 (a) and 3 (b), however, exclude from the scope of the Act "the payment of wages by a bona-fide employer to a bona-fide employee." And Section 6 of the Act provides that the Act shall not be so construed or applied "as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."

The verdict of the jury finding the defendants guilty of violating Section 2 must be taken as establishing as a fact that the defendants conspired together to obtain money from truck operators, in connection with interstate trucking, by the use of, or by threats to use, force, violence, or coercion. The evidence related in the Statement establishes beyond possibility of dispute that this finding of the jury is supported by the record.

The only real issue in the case, therefore, is whether the activities of the defendants are excluded from the scope of the Act either (1) on the ground that the money they obtained constituted

"the payment of wages by a bona-fide employer to a bona-fide employee" within the meaning of Sections 2 (a) and 3 (b); or (2) on the ground that application of the Act to these defendants affects the rights of a bona-fide labor organization in lawfully carrying out its legitimate objectives, as those rights are expressed in existing legislation. We believe that the defendants are not exempt from the Act on either ground.

A. THE MONEY OBTAINED BY THE DEFENDANTS WAS PAID TO BUY PROTECTION AGAINST VIOLENCE AND DID NOT CONSTITUTE THE PAYMENT OF WAGES BY A BONA-FIDE EMPLOYER TO A BONA-FIDE EMPLOYEE

1. We have set forth in the Statement the full charge of the court to the jury on this point. Summarized briefly, the charge was that if the jury found the moneys to have been paid in consideration for work or services rendered, then the payments were wages within the exemption provision, but if the payments were made in order to induce the defendants not to interfere unlawfully with the operation of the trucks, then the payments were not wages and were not protected by the statute.

This charge, we submit, was precisely accurate. The term "wages" as used in the statute obviously means compensation paid for labor by an employer to an employee pursuant to a genuine employment relationship; it does not mean moneys paid for protection from violence, irrespective of the guise in which those moneys are paid. If this were not otherwise clear, it would be made so by the express

limitation of the exemption to wages paid by a "bona-fide" employer to a "bona-fide" employee. No form of words could more clearly express the Congressional intent to confine the exemption to compensation actually paid for labor under a genuine employment relationship.

The court was likewise correct in charging the jury that the fact that some services were rendered by the defendants, although a factor to be considered, was not conclusive of the question whether a genuine employment relationship existed. A bona-fide employer-employee relationship does not exist in every case where one person pays money and another renders services. A hypothetical case will graphically illustrate the point. A group of drivers wearing chauffeurs' uniforms station themselves at both ends of the Holland Tunnel and let it be known to all motorists that the services of an experienced tunnel driver are necessary to negotiate the passage and will cost $1. By threats of violence, and actual violence, they spread the fear that they will wreck any car driven through the tunnel without them. As a result, many motorists employ their "services" and pay the $1 demanded. These payments clearly could not be considered as wages paid by a bona-fide employer to a bona-fide employee, even though the "chauffeurs" actually drive the cars through the tunnel, for the money would have been paid, not for that service, but to assure the safety of the vehicles from the

unlawful acts of the "chauffeurs."[19] The case would in no wise be altered if the "chauffeurs" belonged to a bona-fide labor organization and carried union cards.

As this illustration shows, the test of whether a genuine employer-employee relationship has been created is not simply whether some service is rendered. The test in every case must rather be the one stated by the court in its charge, namely, whether, under all the circumstances, it appears that the money has been paid for labor or for protection. That question is, of course, one of fact for the jury. In the present case the jury determined that issue of fact adversely to the defendants. That its determination is supported by the record needs no elaboration or argument in view of the evidence narrated in the Statement.

2. The court below apparently agreed with the trial court that the Act grants no immunity to the extortion of money for protection against violence, and that the issue of whether the money was paid for labor or for protection is one of fact for the jury. It reversed the convictions, however, because it believed that the trial court should have added to its charge to the jury the instruction that, if the defendants proffered their services to the truck operators in good faith, any moneys they re-

[19] It should be noted in this connection that Section 2 (a) specifically makes unlawful the use of violence or coercion, or threats thereof, to force employers to accept "protective services."

ceived should be treated in the same category as "wages," even though the proffered services were rejected. In so holding, the court below, we think, committed patent error.

As we have stated, the exception in Sections 2 (a) and 3 (b) excludes from the Act only "the payment of wages by a bona-fide employer to a bona-fide employee." Money paid by a truck operator to one who is not employed by him and who does not render services for him does not, we submit, become "wages" paid by a bona-fide employer to a bona-fide employee simply because the recipient of the money may proffer services which he is qualified to render. The proffer of services can neither create a bona-fide employer-employee relationship, nor can it convert payments, intended by the truck operator to purchase "protection" from interference, into compensation to the truck driver for services never in fact rendered.

This is not a case where the language of the statute is ambiguous; indeed, it would be difficult to frame language more clearly confined to payments made as compensation for labor actually performed than the words "wages paid by a bona-fide employer to a bona-fide employee." The mention of "wages" alone would have conveyed the thought, since the word "wages" is universally defined as the payment of compensation for services.[20]

[20] "A compensation given to a hired person for his or her services; the compensation agreed upon by a master to be

But Congress went further in expressing its intent; it provided that the wages to be excluded were only those wages paid by a bona-fide employer to a bona-fide employee. One who is an applicant for employment—i. e., one who proffers his services—is plainly not an "employee" prior to the acceptance of his application, and this is so even though both he and the prospective employer have taken steps looking toward employment, such as the transportation of the applicant at the expense of the prospective employer to the contemplated place of employment.[21] The employment relationship is, by definition, a two-sided arrangement; it cannot be created by a mere proffer of services by a prospective employee, and, *a fortiori*, it cannot be

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paid to a servant, or any other person hired to do work or business for him." *Black's Law Dictionary* (3d Ed.).

"A payment to a person for service rendered." Murray's *New English Dictionary*.

"That which is paid for a service rendered; what is paid for labor; hire: now usually in the plural." *Century Dictionary and Cyclopedia*.

"Pay given for labor, usually manual or mechanical, at short stated intervals, as distinguished from salaries or fees." Webster's *New International Dictionary*.

See also *The Magnetic*, 293 Fed. 94, 97, (D. N. J.).

[21] *Sumner* v. *Edmunds*, 130 Cal. App. 770, 777–778 (1933); *Brewer* v. *Dept. of Labor & Industries*, 143 Wash. 49, 52–53, 57 (1927); *Wells* v. *Clark & Wilson Lbr. Co.*, 114 Ore. 297, 315–317 (1925); *In the Matter of Lederson* v. *Cassidy & Dorfman*, 195 App. Div. (N. Y.) 613 (1921); *Fineberg* v. *Public Service Ry. Co.*, 94 N. J. L. 55, 56 (1919); *Calif. Highway Comm.* v. *Industrial Accident Comm.*, 40 Cal. App. 465, 467–468 (1919). Cf. *Phelps-Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 187–189.

deemed to exist when the proffer is rejected by the prospective employer.

The contrary result reached by the majority of the court below is predicated on the propositions (1) that the exemption in Sections 2 (a) and 3 (b) excludes from the operation of the Act all money paid under or pursuant to a genuine employer-employee status, even though the status was initially obtained through the use of force or violence; and (2) that it is unreasonable to assume that those who succeed in obtaining employment through force or violence are excluded, while those who fail to obtain employment, because their proffer of services is rejected, are included. We may agree with the first proposition, but the plain words of the statute forbid indulgence in the assumption which forms the basis of the second. The statute expressly exempts wages paid pursuant to a genuine employer-employee relationship; it neither expressly nor by implication exempts money paid to one who is not an employee, irrespective of the reason for his failure to obtain an employee status.

Furthermore, the court below was wrong in believing that it was unreasonable to differentiate between wages paid to bona-fide employees, even though their employment was obtained through coercion, and money paid to others whose proffered services have been rejected. Those who use coercion to secure genuine employment are engaged in a legitimate labor objective; their activities, al-

though perhaps constituting breaches of the peace, do not partake of the nature of extortion. But it is difficult, if not impossible, to conceive of a situation in which a person can succeed in obtaining money from a prospective employer by a mere proffer of services and without entering upon a genuine employment relationship unless his activities do partake of the nature of extortion. For an employer who, under threat of violence, pays a person whose proffered services he rejects must be paying only for protection against the threatened violence. Judge A. N. Hand well expressed this view in his dissenting opinion, when he said (R. 2810):

> It may be added that Congress may have determined to exempt men from prosecution under the Anti-Racketeering Act who actually obtain a status as employees, even though the status is secured by coercion, but not to grant exemption to men who have done nothing but "shake down" prospective employers without rendering any service. The one policy might tend to preserve an employer-employee relation when once established, while the other would involve toleration of intermittent acts of brigandage resulting in no ascertainable advantage.

In our view, the proffer of services, like the rendition of some services, is simply a factor to be considered in determining the one crucial issue in every case such as this—namely, whether the money

was paid for labor or for protection.[22] As applied to this case, that issue was whether the defendants' activities constituted a "shake-down racket," as defendant Campbell himself described them at a Union meeting (R. 2123), or whether they constituted genuine labor services, as defendants now contend. That is the issue which the trial court posed to the jury. And that is the issue which the jury necessarily decided in favor of the Government.

B. THE APPLICATION OF THE ACT TO THE DEFENDANTS DOES NOT VIOLATE THE PROVISO IN SECTION 6

Section 6 of the Anti-Racketeering Act contains the following proviso:

> That no court of the United States shall construe or apply any of the provisions of this Act in such manner to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States.

This proviso, it will be noted, is not an exemption or exclusion provision. It is simply a caveat to the courts that the Act shall not be so construed or applied as to impinge upon rights conferred upon labor unions by existing legislation. Plainly,

[22] The trial court so charged the jury, stating (R. 2451): "The jury may consider the extent of the work done in the circumstances and the willingness or the unwillingness of the defendant in each instance to do the work for which he claims to have been hired."

no existing legislation confers upon any labor organization the right to conduct a "shake-down racket," and the conviction of the union and of the individual defendants cannot, therefore, be said to be a construction or application of the Act prohibited by the proviso.

1. The only "existing" federal statutes expressing "rights" of labor organizations which might be deemed pertinent are the Clayton Act (Sections 6 and 20) and the Norris-LaGuardia Act.[23] The Anti-Racketeering Act as applied in this case did not impair or diminish any right conferred by these statutory provisions.

Section 6 of the Clayton Act is inapplicable because such rights as it confers are limited to exemption from the prohibitions of the federal antitrust laws; the Anti-Racketeering Act is not a part of those laws. Section 6 provides that nothing contained in the "antitrust laws" shall forbid members of labor organizations from lawfully carrying out their legitimate objects and that such organizations shall not be held to be illegal combinations in restraint of trade "under the antitrust laws."

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[23] The National Labor Relations Act (49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151, *et seq.*) was not in existence at the time the Anti-Racketeering Act was passed, and consequently may not be considered as an "existing" federal statute within the meaning of the Anti-Racketeering Act. In any event, the application of the Anti-Racketeering Act to these defendants obviously impinges upon no rights guaranteed to labor organizations by the National Labor Relations Act.

Section 20 of the Clayton Act is likewise inapplicable here. The first paragraph provides that, except under certain stated conditions, no injunction shall be granted by any federal court in any case between an employer and employees involving a dispute concerning "terms or conditions of employment." The second paragraph provides that no "such" injunction shall prohibit certain specified conduct, and it concludes with the provision, "nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States." The immunity given by this section is thus limited to conduct of the kind described in the second paragraph of the section.

The acts therein specified and given immunity are strikes and instigating strikes,[24] picketing,[25] boycotts,[26] payment of strike benefits,[27] peaceable assembly,[28] and doing in concert any act lawful in

[24] "terminating any relation of employment, * * * ceasing to perform any work or labor or * * * recommending, advising, or persuading others by peaceful means so to do."

[25] "attending at any place * * * for the purpose of peacefully obtaining or communicating information, or * * * peacefully persuading any person to work or to abstain from working."

[26] "ceasing to patronize or to employ any party to such dispute, or * * * recommending, advising, or persuading others by peaceful and lawful means so to do."

[27] "paying or giving to, or withholding from, ane person engaged in such dispute, any strike benefits or other moneys or things of value."

[28] "peaceably assembling in a lawful manner, and for lawful purposes."

itself.[29] The facts previously set forth make it patent that in this case the defendants were not striking or instigating others to strike, nor were they peacefully picketing, carrying on a boycott, or assembling peaceably for a lawful purpose. The application of the Anti-Racketeering Act to them, therefore, infringes upon no rights of a labor union expressed in Section 20 of the Clayton Act.

The Norris-LaGuardia Act limits the jurisdiction of federal courts to issue injunctions in labor disputes. Even if this jurisdictional limitation could be construed to constitute some kind of affirmative sanction—in other words, to express "rights" of labor organizations—the restrictions imposed by Section 4 substantially parallel those in Section 20 of the Clayton Act, and are directed against enjoining strikes, picketing, boycotts, and peaceable assembly.[30] The reasons making Section 20 of the Clayton Act inapplicable to the defendants apply with equal force to the jurisdictional limitation of the Norris-LaGuardia Act.

Defendants likewise cannot rely upon the declaration in Section 2 of the Norris-LaGuardia Act

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[29] "doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto."

[30] The important forward step made by the Norris-LaGuardia Act was that it broadened the definition of labor disputes and, by Section 7, prohibited federal courts from issuing injunctions in labor disputes until after there had been a hearing in open court and the court had made certain specified findings of fact.

that it is the public policy of the United States that labor organizations shall have full freedom of self-organization and in the designation of collective bargaining representatives and that they shall be free from the interference, restraint, or coercion of employers in self-organization and in the designation of such representatives. In the present case there was no interference with or restraint upon defendants' right to organize or to select collective bargaining representatives. And since there were no yellow-dog contracts in this case, the prohibition in Section 3 against enforcement of such contracts likewise has no application.

2. Furthermore, the "rights" of the labor union are protected by the proviso only insofar as the union is "lawfully carrying out the legitimate objects thereof." This requirement has plainly not been met.

For purposes of the present argument, we do not urge that the use of the word "lawfully" makes the proviso inapplicable whenever the defendants are found guilty of violence. Although we do not agree with the view of Judge Clark (R. 2808) that such a construction would make the proviso meaningless,[31] we prefer to rest our argument here

[31] Section 2 makes unlawful the obtaining of money by the use, not only of violence, but also of threats of violence and of coercion. See *Nick* v. *United States*, 122 F. (2d) 660 (C. C. A. 8th), certiorari denied, November 24, 1941, No. 712 this term. Even if the word "lawfully" be construed as

upon the ground that the objective sought by the defendants in this case was not a "legitimate" union objective. If the defendants had been seeking to achieve a legitimate labor objective, we doubt whether their activities would come within the scope of the Act simply because of the presence of violence. The whole tenor of the Act indicates the Congress intended to punish activities similar to extortion; violence used as a means of obtaining a lawful labor union objective is not extortion but simply a breach of the peace or other kindred unlawful act. Moreover, in every case of which we can think where a member of a labor union obtains money in carrying out the legitimate objects of the union, the money is paid in the form of wages pursuant to a genuine employer-employee relationship. Since such wages are exempt under Section 2 (a) and 3 (b) even though violence may have been used to secure them, there seems no occasion to urge that the mere existence of violence renders the proviso in Section 6 inapplicable.

We do urge, however, that the proviso is inapplicable here because the defendants' activities were not directed toward a legitimate objective. The facts narrated in the Statement and the discussion in the preceding portion of the brief demonstrate

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excluding from the proviso activities constituting breaches of the peace, the proviso would still apply to non-violent coercion employed by labor union members in furtherance of legitimate union objectives.

that those activities were designed, not to secure a genuine employer-employee relationship, but to obtain money in return for protection. This is manifestly not a "legitimate" object of a labor organization, however broadly that term may properly be construed. If the Act has any application at all to labor union racketeering—and the carefully confined scope of the exclusion provision demonstrates that it does—the type of racketeering proved in this case must fall within its scope.[22]

C. THE LEGISLATIVE HISTORY OF THE STATUTE IS NOT OPPOSED TO OUR CONTENTIONS

Defendants contend that the legislative history of the Anti-Racketeering Act demonstrates that Congress intended to give to labor unions and their members wide and sweeping immunity from prosecution. No such inference is warranted.

The bill which became the Anti-Racketeering Act was one of 13 bills introduced by the three members of a subcommittee of the Senate Committee on Commerce which had made an investigation, pursuant to a Senate resolution, of so-called

[22] As we point out below (p. 48), the proviso in Section 6 originated in a revised draft, prepared by the Department of Justice, of a bill (S. 2248) already passed by the Senate. The Attorney General's letter forwarding the revised draft to the House Judiciary Committee declared that "legitimate" activities of employees, as distinguished from "racketeering by violence, extortion or coercion" are excluded from the prohibitions of the bill. H. Rep. No. 1833, 73d Cong., 2d sess., p. 2.

racketeering and related crimes.[33] The Judiciary Committee reported the bill favorably and it was passed without debate.[34] On the next legislative day a motion to reconsider was made upon the ground that representatives of the American Federation of Labor believed that the bill might be discriminatory against labor and desired an opportunity to be heard, but no action was taken upon this motion (78 Cong. Rec., pt. 6, p. 5859).

In the House, the Judiciary Committee reported a complete revision of the Senate bill and recommended enactment of the bill as revised (H. Rep. No. 1833, 73d Cong., 2d sess.). The revision somewhat narrowed the prohibitions of the original bill and added the clauses exempting wages paid by a bona-fide employer to a bona-fide employee and the proviso in Section 6. The committee report quotes a letter from the Attorney General stating that the substitute had been prepared upon the informal suggestion of the House Judiciary Committee and that the president of the American Federation of Labor and his counsel had, after a series of conferences, "definitely approved" the revised bill (H. Rep. No. 1833, 73d Cong., 2d sess., p. 2). One paragraph of this letter reads:

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[33] 78 Cong. Rec., pt. 1, pp. 409, 448, 457–458. The bill (S. 2248, 73d Cong.) is set forth in the Appendix, *infra*, pp. 61–62.

[34] S. Rep. No. 532, 73d Cong., 2d sess.; 78 Cong. Rec., pt. 6, pp. 5734–5735. The committee report quotes a letter from the Department of Justice explaining the purpose of and the need for the legislation.

> The original bill was susceptible to the objection that it might include within its prohibition the legitimate and bona fide activities of employers and employees. As the purpose of the legislation is not to interfere with such legitimate activities but rather to set up severe penalties for racketeering by violence, extortion, or coercion, which affects interstate commerce, it seems advisable to definitely exclude such legitimate activities.

The House, after accepting a committee amendment eliminating one subparagraph of Section 2 and reducing the maximum penalty for violation, passed the revised bill without debate and the Senate, likewise without debate, concurred in the bill as amended by the House.[35]

This legislative history obviously supports no inference that Congress intended the provisions incorporated in the Act for the protection of labor to have a broader application than that resulting from the plain language of those provisions.

II

THE ANTI-RACKETEERING ACT IS CONSTITUTIONAL

Defendants contend (Br., pp. 9–10) that the Constitution, by authorizing Congress to deal with certain crimes—counterfeiting United States money, piracy and felonies on the high seas, and treason—deprived it of power to deal with other

[35] 78 Cong. Rec., pt. 10, pp. 11402–11403; *id.*, pt. 1[illegible] p. 11482.

crimes. But the power of Congress to impose criminal penalties for violation of laws enacted pursuant to its delegated powers, and thus to secure obedience to these laws, is too long and too firmly established to require citation of authority or argument.

Defendants also urge (Br., pp. 10–12) that because Article IV, Section 4, of the Constitution provides that the United States shall, on the application of any state, protect it against "domestic violence," this grant of authority somehow withdraws from Congress all power to legislate upon the subject of violence. In answer to this contention it is sufficient to note (1) that this is not even a grant of power to Congress but simply a guarantee that the states, in case of "invasion" or "domestic violence," may call upon the national executive for aid, and (2) that the mob violence or incipient insurrection with which this constitutional provision is concerned is wholly different in character from the racketeering activities which come within the prohibitions of the Anti-Racketeering Act. Cf. *United States* v. *Cruikshank*, 92 U. S. 542, 556.[36] Moreover, Congress has, under its commerce power, provided

[36] There is a comprehensive history of the proceedings of the Constitutional Convention relating to this constitutional provision, and of the circumstances under which it has been exercised, in *Federal Aid in Domestic Disturbances*, S. Doc. No. 209, 57th Cong., 2d sess.; see also Watson, *The Constitution of the United States*, vol. 2, pp. 1282–1287, 1293–1301.

in several instances for the punishment of acts of violence and the constitutionality of such legislation has never been seriously questioned.[37]

Defendants further urge (Br., pp. 12–38) that if the Anti-Racketeering Act is constitutional the states will be ousted from jurisdiction as to offenses within the purview of the statute. But it is elementary that federal legislation under the commerce power is not a bar to complementary state legislation in the same field unless Congress has manifested a purpose to preempt the entire field. The Anti-Racketeering Act is obviously not a detailed regulatory statute having this effect.

The lower federal courts have upheld the constitutionality of the Anti-Racketeering Act,[38] and this Court, in *Apex Hosiery Co.* v. *Leader*, 310 U. S.

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[37] E. g., violent interference with foreign commerce, Act of June 15, 1917, 18 U. S. C., sec. 381; larceny of goods in interstate or foreign commerce, Act of February 13, 1913, 18 U. S. C., sec. 409 (constitutionality upheld, *Morris* v. *United States*, 229 Fed. 516, 519–520 (C. C. A. 8th); *Friedman* v. *United States*, 233 Fed. 429 (C. C. A. 1st), writ of error dismissed 244 U. S. 643); transporting a kidnapped person in interstate commerce, Act of June 22, 1932, 18 U. S. C., sec. 408a (constitutionality upheld, *Seadlund* v. *United States*, 97 F. (2d) 742, 745–757 (C. C. A. 7th); *United States* v. *Dressler*, 112 F. (2d) 972, 974 (C. C. A. 7th); constitutionality assumed but not directly in issue, *Gooch* v. *United States*, 297 U. S. 124).

[38] *Nick* v. *United States*, 122 F. (2d) 660, 667–669 (C. C. A. 8th), certiorari denied November 24, 1941, No. 712, this Term; *United States* v. *Gramlich*, 19 F. Supp. 422 (S. D. Ill.).

469, 492–493, set forth the entire text of the Act as an instance of legislation enacted to protect interstate commerce. Furthermore, in the present case, although the defendants pressed in the court below the same arguments as to unconstitutionality which they press here, the court did not consider the contentions of sufficient substance to merit even passing reference.

III

AN UNINCORPORATED LABOR ORGANIZATION IS A PERSON WITHIN THE MEANING OF THE ANTI-RACKETEERING ACT

Defendants contend that the word "person" as used in the Anti-Racketeering Act does not apply to an unincorporated association and that the indictment should therefore be dismissed as against Local 807. (Br. 60–62).

The statute itself tends to refute this contention. The proviso in Section 6, previously discussed, to the effect that the Act shall not be construed or applied so as to impair "the rights of bona fide labor organizations" legitimately carrying out their lawful objects, is some indication, at least, that Congress believed that these organizations were within the general prohibitions of the statute. And this Court apparently so read the Act when it stated in *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 493 n., that "the application of the provisions of § 420a [Section 2 of the Anti-Racketeering Act]

to labor unions is restricted by § 420d [Section 6 of the Anti-Racketeering Act]." [39]

This construction of the Act is clearly consonant with its purposes. Senator Copeland, who introduced the bill in the Senate, plainly indicated that one form of crime which the legislation was designed to combat was industrial racketeering carried on in the form of "protective associations." 78 Cong. Rec., pt. 1, pp. 448–452. Indeed, Section 2 (a) of the Act specifically makes unlawful the use of violence or threats of violence to force the acceptance of "protective services." Certainly the mischiefs of such a "protective association" will be better guarded against if the organization itself, as well as the guilty individuals, can be brought before the bar of justice and held to account. No apparent purpose is served by excluding such an association from the Act.

It has long been recognized that when the word "person" is used in legislation it may embrace both juristic and natural persons and that it does so if this meaning serves to effectuate the pur-

[39] In the court below, Judge Clark, noting that Congress had excepted "not labor organizations themselves" but "labor organization rights," inferred from this that Congress believed that labor organizations as such required no exemption from the Act (R. 2807–2808). We believe that Judge Clark misread the effect of the proviso. Labor organizations are directly within the protection given by the proviso since it is framed in terms of *their* activities; it is only by inference that *members* of such organizations can be said to be within the protection of the proviso.

poses of the statute. Lord Coke, in discussing a penal statute, stated that the word "person" extends "as well to persons politicke and incorporated, as to naturall persons whatsoever." 2 Co. Inst. 736. The same result was later achieved by statute in England.[40] *United States* v. *Amedy*, 11 Wheat. 392, held that a federal statute which made it a crime to destroy a ship with intent to prejudice "any person or persons that hath underwritten" the policy of insurance thereon applied where the policy upon the destroyed ship had been underwritten by a corporation. The Court, speaking through Mr. Justice Story, rejected the argument that a corporation is not a person within the meaning of the statute, stating (p. 412):

> The mischief intended to be reached by the statute is the same, whether it respects private or corporate persons. That corporations are, in law, for civil purposes, deemed persons, is unquestionable.

Similarly, in *United States* v. *Union Supply Co.*, 215 U. S. 50, this Court held that a statute which required wholesale dealers in oleomargarine to keep certain books and punished "any person" who wilfully violated its provisions applied to corporations. Mr. Justice Holmes said (pp. 54–55):

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[40] Section 18 of the Interpretation Act of 1889 (52 and 53 Vict. c. 63) provides that the word "person" shall, unless the contrary intention appears, include "any body of persons, corporate or unincorporate."

> It is impossible to believe that corporations were intentionally excluded. They are as much within the mischief aimed at as private persons, and as capable of a "wilful" breach of the law.

Again, in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 383–392, the Court held that an unincorporated labor union was a "person" which could be sued in its own right and could be held liable for triple damages under Section 7 of the Sherman Act. The Court based this conclusion upon the wide recognition, in state and federal legislation, of labor unions as distinct legal personalities.[41] The Court (p. 392) relied only incidentally upon the definition in Section 8, that the word "person" as used in the Act shall include "corporations and associations existing under or authorized by the laws" of the United States or of any state, a definition which is of doubtful application to an *unincorporated* association not deriving its status from legislation. An unincorporated association

[41] Since the *Coronado* decision the lower federal courts have consistently reached the conclusion in cases not based on the Sherman Act that trade unions and other unincorporated associations are legal entities subject to suit. *Russell* v. *Central Labor Union*, 1 F. (2d) 412 (D. C. E. D. Ill.); *In re Cleveland & Sandusky Brewing Co.*, 11 F. Supp. 198, 200 (D. C. N. D. Ohio); *Gaunt* v. *Lloyd's America of San Antonio*, 11 F. Supp. 787 (D. C. W. D. Tex.); *National Association of Insurance Agents* v. *Committee for Industrial Organization*, 25 F. Supp. 540 (D. C. D. C.); *Green* v. *Gravatt*, 34 F. Supp. 832 (D. C. W. D. Pa.).

has likewise been held to be a person for purposes of the penal provisions of the Sherman Act. *Brown* v. *United States*, 276 U. S. 134, 141–142.[42]

The three authorities cited by defendants (Br., p. 60) are all cases where the context clearly restricted the meaning of the word "person."

IV

THE INDICTMENT IS NOT DEFECTIVE FOR FAILURE ADEQUATELY TO SPECIFY THE NATURE OF THE OFFENSE CHARGED

Defendants contend (Br., pp. 62–78) that the indictment does not set forth the offense with sufficient certainty to meet the requirements of the Sixth Amendment that the defendant "be informed of the nature and cause of the accusation."

There is no dispute as to the general principles governing the scope of this constitutional provision. It has been repeatedly stated that the defendant must be advised of the charge against him with sufficient clearness "in order that he may meet it and prepare for trial and, after judgment, be able to plead the record and judgment in bar of a further prosecution for the same offense." *Wong Tai* v. *United States*, 273 U. S. 77, 80–81; *Bartell* v.

[42] This question was involved but not discussed in *United States* v. *Borden Co.*, 308 U. S. 188; *United States* v. *Greater N. Y. Live Poultry Chamber of Commerce*, 47 F. (2d) 156 (C. C. A. 2d), certiorari denied 283 U. S. 837; *United States* v. *American Medical Ass'n*, 110 F. (2d) 703 (App. D. C.), certiorari denied, 310 U. S. 644.

United States, 227 U. S. 427, 431; *Rosen* v. *United States*, 161 U. S. 29, 40.

The courts in recent years have rarely sustained objections grounded upon the alleged failure of the indictment to inform the accused of the nature of the charge against him. As this Court said in *Hagner* v. *United States*, 285 U. S. 427, 431:

> The rigor of old common law rules of criminal pleading has yielded, in modern practice, to the general principle that formal defects, not prejudicial, will be disregarded. The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, "and sufficiently apprises the defendant of what he must be prepared to meet * * *."

Furthermore, it is well settled that in an indictment for conspiracy, where the conspiracy is the gist of the crime, it is not necessary to describe the conspiracy with as much precision and detail as in describing a substantive offense. *Wong Tai* v. *United States*, 273 U. S. 77, 81; *Thornton* v. *United States*, 271 U. S. 414, 423; *Mercer* v. *United States*, 61 F. (2d) 97, 99 (C. C. A. 3rd).

Tested by these principles, the present indictment fully meets the requirements of the Sixth Amendment. It charges that the defendants were parties to a continuing conspiracy beginning about December 1, 1936, to obtain money by means of

force, violence, and coercion and threats thereof, from those engaged in transporting merchandise by truck from points outside the State of New York to New York City (R. 59–60). It also charges that the money which the defendants conspired to obtain was $9.42 for each large truck and $8.41 for each small truck which thus transported merchandise to New York City (R. 60). The indictment sets forth in detail the manner in which this coercion had been exercised and the means used in effectuating the conspiracy (R. 60–66).

The indictment thus describes with precision the nature of the conspiracy, the persons and commerce affected thereby, and the means used in accomplishing it. Conviction thereunder plainly bars a second prosecution under any indictment charging the defendants with conspiring during the same period of time to obtain money from over-the-road truck operators.

There is no merit in defendants' contention that the indictment is defective because it charges them with conspiring to obtain money from over-the-road operators generally rather than from any specified operators. In this case the conspiracy was not to obtain money from particular individuals or corporations as such, but to obtain a certain sum of money for each over-the-road truck delivering merchandise in New York City. Accordingly, the indictment could not have charged defendants with conspiring to obtain money from particular

shippers without charging a conspiracy substantially different in character from that which the indictment in the present case charges and which the jury found to exist. An indictment for conspiracy may be as general as the conspiracy it seeks to punish. *Wing* v. *United States,* 280 Fed. 112 (C. C. A. 5th).

Under the federal mail-fraud statutes, indictments naming those defrauded merely as a class have repeatedly been held to be sufficiently definite.[43] The reason for the rule is explained in *Wolpa* v. *United States,* 86 F. (2d) 35 (C. C. A. 8th), certiorari denied, 299 U. S. 611, where, in holding that it was sufficient to designate the intended victims of defendants' scheme as "persons engaged in the mercantile business," the court said (p. 39):

> The appellants next contend that the failure to name the individuals who were to be defrauded or to state that they were unknown is fatal to the indictment. It may be conceded that such particularity is required where the nature of the scheme imports an intention to defraud a certain person or certain definite individuals; "but where a

[43] *Wolpa* v. *United States,* 86 F. (2d) 35 (C. C. A. 8th), certiorari denied, 299 U. S. 611; *Hyney* v. *United States,* 44 F. (2d) 134 (C. C. A. 6th); *Berry* v. *United States,* 15 F. (2d) 634 (C. C. A. 5th); *Ader* v. *United States,* 284 Fed. 13 (C. C. A. 7th); *Finnegan* v. *United States,* 231 Fed. 561 (C. C. A. 6th); *Gould* v. *United States,* 209 Fed. 730 (C. C. A. 8th).

scheme is to defraud, not definite individuals, but a class, or one individual and others belonging to the same class, who were not selected by the alleged schemer when the scheme was formed, it is not necessary, in alleging the scheme, to name the parties intended to be defrauded, who were not identified by the accused when the scheme was devised and were not capable of definite ascertainment by the pleader." [Citing cases.]

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed and that the judgment of the District Court as to each defendant should be affirmed.

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DECEMBER 1941.

APPENDIX

S. 2248, 73D CONG. 2D SESS., AS INTRODUCED AND ORIGINALLY PASSED BY THE SENATE

Be it enacted, etc., That the term "trade and commerce", as used herein, shall include trade or commerce between any States, with foreign nations, in the District of Columbia, in any Territory of the United States, between any such Territory or the District of Columbia and any State or other Territory, and all other trade or commerce over which the United States has constitutional jurisdiction.

SEC. 2. Any person who, in connection with or in relation to any act in any way or to any degree affecting, burdening, hindering, destroying, stifling, or diverting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(1) commits or threatens to commit any act of violence, intimidation, or injury to a person or property, or commits any act which is declared to be unlawful by the criminal laws of the State, district or Territory where the act is committed; or

(2) extorts or attempts to extort money or other valuable considerations; or

(3) coerces or attempts to coerce any person, firm, association, or corporation to join or not to join an association, firm, corporation, or group, or to buy or rent commodities or services from particular sources, persons, firms, or corporations, or

to make payments directly or indirectly to any person, association, firm, corporation, or group except for a bona fide consideration; or

(4) coerces or attempts to coerce any person, firm, association, or corporation to do an act which such person, firm, association, or corporation has a legal right not to do, or to abstain from doing an act which such person, firm, association, or corporation has a legal right to do—

shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from 1 to 99 years, and, in addition, by a fine which shall be at least commensurate with the amount of the unlawful gain.

SEC. 3. Any person charged with violating this act may be punished in any district in which any part of the offense has been committed by him or his associates or his conspirators.

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